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EXAMINER

NILAND, PATRICK DENNIS

ART UNIT

PAPER NUMBER

1714

DATE MAILED: 10/23/2002

13

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/768,274

Applicant(s)

TEMME ET AL.

Examiner

Patrick D. Niland

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-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 18-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 18-22, 25-27, 30, 32, 34, and 36-38 are rejected under 35 U.S.C. 102(e) as being anticipated by US Pat. No. 6218500 Keute et al..

Keute et al. discloses a method of covering a floor with a composition falling within the scope of the instant claims. Organic solvent is not required and any ketone used is removed. The solids content falls within the scope of the instant claims. See the abstract; column 1, lines 44-55; column 3, lines 5-17; column 6, lines 40-45; column 9, lines 50-67; and the remainder of the document. Though "sports floor" is not specified, one can play "sports" on any floor. This preambular phrase therefore does not distinguish over the method of the instant claims. The patentee is silent regarding the particle size of the urethane disclosed therein. The burden is on

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the applicant to show that it does not inherently possess the instantly claimed particle size because its molecular weight and ionic group content would indicate that it would possess a very small particle size and dispersed urethanes are typically of 20 nm to 5 micrometers.

4. Claims 18-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 6218500 Keute et al..

Keute et al. discloses a method of covering a floor with a composition falling within the scope of the instant claims. Organic solvent is not required and any ketone used is removed. The solids content falls within the scope of the instant claims. See the abstract; column 1, lines 44-55; column 3, lines 5-17; column 6, lines 40-45; column 9, lines 50-67; and the remainder of the document. Though "sports floor" is not specified, one can play "sports" on any floor. This preambular phrase therefore does not distinguish over the method of the instant claims. The patentee is silent regarding the particle size of the urethane disclosed therein. The burden is on the applicant to show that it does not inherently possess the instantly claimed particle size because its molecular weight and ionic group content would indicate that it would possess a very small particle size and dispersed urethanes are typically of 20 nm to 5 micrometers.

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to add the additives of the instant claims 24, 28, 29, 31, 34, and 35 because these additives will give their well known properties to the polymer matrix of the patentee. It would have been obvious to one of ordinary skill in the art at the time of the instant invention to spray the coating of the patentee on the floor because this is a conventional method of coating things with an aqueous

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dispersion. It would have been obvious to one of ordinary skill in the art at the time of the instant invention to use the composition of the patentee as an adhesive according to the instant claim 33 because it is known to be adhesive from column 1, lines 10-13 and its properties such as tensile strength and flexibility would have been expected in the laminate resulting therefrom. It would have been obvious to one of ordinary skill in the art at the time of the instant invention to use the molecular weight of the instant claim 23 because the patentee states that choice of molecular weight is within the ability of the ordinary skilled artisan at column 8, lines 42-48 and molecular weight gives only predictable properties such as viscosity by definition of viscosity average molecular weight and modulus.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick Niland whose telephone number is (703) 308-3510. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan, can be reached on (703) 306-2777. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310 before final and (703) 872-9311 after final.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

pn

  
PATRICK D. NILAND  
PRIMARY EXAMINER